



OAR 141-090 RAC Meeting #2 Summary

Tuesday, November 1 – 2:00 p.m. to 4:00 p.m.

Overview

The OAR 141-090 Rulemaking Advisory Committee was convened by the Oregon Department of State Lands on November 1, 2022, via Zoom. The RAC was convened to provide input on proposed amendments to the administrative rules for wetland delineation report requirements and for jurisdictional determinations for the purpose of regulating fill and removal within waters of the state.

RAC Members and Attendance

Name	Affiliation	Present?
Members		
Allen Martin	Geo Resources	Y
Brad Livingston	Oregon Department of Transportation	Y
Jessica Dorsey	League of Oregon Cities	
Jodi Forgione	Schott & Associates, Inc.	Y
John van Staveren	The Wetlands Conservancy; Pacific Habitat Services, Inc.	Y
Branden Pursinger	Association of Oregon Counties	Y
Lauren Poor	Oregon Farm Bureau	
Phil Scoles	Terra Science, Inc.	Y
Stacey Reed	AKS Engineering & Forestry	Y
Katie Ryan	The Wetlands Conservancy	
Samantha Bayer	The Oregon Home Builders Association	Y
Ed Strohmaier	Tetra Tech	Y
Staff/Advisors		
Bill Ryan	DSL, Deputy Director	
Danielle Boudreaux	DSL, Rules and Records Coordinator	Y
Pete Ryan	DSL, Project Manager	Y
Lynne McAllister	DSL, Jurisdiction Coordinator	Y
Dana Hicks	DSL, Planning & Policy Manager	Y
Steve Faust	3J Consulting, Inc., Facilitator	Y
Interested Parties		
Melanie O'Meara	US Army Corps of Engineers	
Chris Stevenson	DSL, Jurisdiction Coordinator	Y
Daniel Evans	DSL, Jurisdiction Coordinator	
Jess Salgado	DSL, Jurisdiction Coordinator	Y
Jevra Brown	DSL, Jurisdiction Coordinator	
Matt Unitis	DSL, Jurisdiction Coordinator	Y

Welcome and Introductions

Steve Faust, Facilitator, and Peter Ryan, DSL Project Manager welcomed everyone, and each member in turn introduced themselves to the rest of the group.

RAC Operating Procedures and Rulemaking Purpose and Scope

Steve briefly went over the operation procedures for the RAC, including an explanation of the consensus model that the RAC is using to facilitate decision making and to ensure that the RAC benefits from the individual views, experiences, background, training, and expertise of the members. Two trade associations members of the RAC, Samantha Bayer (The Oregon Home Builders Association) and Branden Pursinger (Association of Oregon Counties) informed the RAC they could not participate in the consensus process without first checking with their association group Boards.

Peter then restated the purpose and scope of the rulemaking from RAC Meeting #1.

Discussion of Draft Rules

Peter began the discussion by addressing what DSL considers substantive changes to the rule. As time allowed and as directed by the RAC, the group also discussed topics considered to be minor changes by DSL. The following summarizes the groups discussion by rule number.

Rule 141-090-0005

No discussion

Rule 141-090-0010

No discussion

Rule 141-090-0015

No discussion

Rule 141-090-0020 Definitions

The RAC requested that definitions for Cowardin and HGM be added to the rules. DSL added the definitions from Division 85.

(3) The RAC asked DSL about its statutory authority for requesting descriptions and mapping for aquatic resources of special concern (ARSC). The group agreed to revisit this item at the next RAC meeting.

(12) The RAC noted that the definition of fill proposed for Division 90 rule did not match the definition of fill used in Division 85. DSL agreed and will make the two definitions match.

(15) DSL introduced the new proposed definition for GIS, there was no discussion.

(17) RAC questioned the addition of “or mark” in the definition of Jurisdictional Determination. DSL responded by changing it to (ordinary high water mark). The intent is to indicate that the two terms are equivalent.

(31) The question came up, why did the definition for removal include the phrase “or its equivalent weight in tons”. The phrase is from ORS 196.800 Definitions for ORS 196.600 to 196.921. ORS196.800(13) “Removal” means: (a) The taking of more than 50 cubic yards or the equivalent weight in tons of material in any waters of this state in any calendar year.

(35) No changes were requested during the meeting for the revised “site-specific methods” definition.

(36) DSL added “potential” wetlands and waterways to the “Statewide Wetlands Inventory” definition. ORS 196.672 requires DSL to develop a statewide inventory of wetlands based on uniform identification standards and criteria at a scale practicable for planning and regulatory purposes, and to make such inventory available to state agencies and local governments to facilitate better management of wetland resources and closer coordination of local, state and federal wetland programs.

Rule 141-090-0025

No discussion

Rule 141-090-0030

No discussion

Rule 141-090-0032

No discussion

Rule 141-090-0035

(5) The RAC found the first sentence of this rule confusing and questioned whether DSL’s intent is to require GIS data and DSL said yes. The group agreed to revisit this item at the next RAC meeting.

(7)(b & c): RAC discussed addition of identifying Cowardin, HGM, and ARSC in field methods. RAC requested an explanation for these changes and whether it expands DSL’s regulatory authority. The group agreed to revisit this item at the next RAC meeting.

(11) No questions about change from use of “precision” to “accuracy”. One member approved the addition of reference to ORS 672 et seq in the rule.

(12)(e)(A-H) DSL is proposing to request this information, when applicable, to get a complete description of all wetland and other water polygons identified in the study area. The information is needed to determine jurisdiction and/or to determine permitting requirements.

RAC member request added “(E) Stream flow duration of other waters” to the list of characteristics requested.

The RAC asked for more information regarding section (G) (originally F). This section requests information about wetlands below the ordinary high water line. One member indicated that they do not support this rule change at this time. DSL emphasized that this request is not new since existing statute and rule requires wetland delineation reports include information about all wetlands in a study area. The group agreed to revisit this item at the next RAC meeting.

RAC asked that section (H) be revised to read “Whether it is State-approved compensatory mitigation, if known”.

(14) (f) (A-F) The RAC comments for this section matched those for section (7) and (12)(e). The group agreed to revisit this item at the next RAC meeting.

Rule 141-090-0040

(3)(d) Following DSL comment about moving the “more than 60 day response time” trigger from a reason for report withdrawal to a reason for report rejection the RAC asked why. DSL explained that ignoring DSL requests for additional information for more than 60 days slows down the review process and creates bottlenecks that slow down all other reviews. The problem is serious enough that report rejection is justified.

(3)(f)(C)(xii) The RAC requested, and DSL added “communications” to proposed addition of “more than 60 day response time” reason for report rejection.

Rule 141-090-0045

No discussion

Rule 141-090-0050

(4) DSL received a comment from a RAC member asking it to find a less costly alternative to the contested case process that could be inserted into the rule to replace the sunsetted independent review panel process.

General comment for entire rule set

The RAC posed the question, does replacing “other waters of this state” with “other waters” expand the state’s statutory authority or jurisdiction? DSL response is no. the terms are not mutually exclusive. “Waters of this state” are defined in ORS 196.800(15) and are regulated by the state Removal Fill Law. “Other waters” includes artificially created wetlands and other waters along with waters of this state. “Other waters” is a general term meaning waters other than wetlands, whether jurisdictional or not. DSL need a way to distinguish the pool of other waters from those that are jurisdictional.

Summary and Next Steps

Steve and Danielle conducted a Zoom poll to determine potential dates for the RAC Meetings #4. However, to give the DSL team more time to review and respond to questions and comments submitted by RAC members after RAC meeting #2, we have decided to reschedule RAC Meeting #3 for the date and time selected for meeting #4, December 6th at 2pm. RAC Meeting #4 will be scheduled for the week of January 9th. We will poll the group for availability at the next meeting.